

1 CHARLES G. LA BELLA (State Bar No. 183448)
 2 STEVEN T. COOPERSMITH (State Bar No. 184646)
 3 LA BELLA & McNAMARA LLP
 4 401 West "A" Street, Suite 1150
 San Diego, California 92101
 Telephone: (619) 696-9200
 Facsimile: (619) 696-9269

FILED

2007 DEC 19 PM 3:44

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY FMM DEPUTY

5 TODD D. THIBODO (State Bar No. 171655)
 6 LAW OFFICES OF TODD D. THIBODO
 A PROFESSIONAL CORPORATION
 7 16133 Ventura Boulevard, Suite 580
 Encino, California 91436
 Telephone: (818) 907-5769
 Facsimile: (818) 907-5793

8 Attorneys for PLAINTIFFS
 9 JIM MAXWELL and KAY MAXWELL,
 individually and as guardians of TREVER
 10 ALLEN BRUCE and KELTEN TANNER
 BRUCE; and JIM MAXWELL, as executor
 11 Of the ESTATE OF KRISTIN MARIE
 MAXWELL-BRUCE

12
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

13 JIM MAXWELL and KAY MAXWELL,
 14 individually and as guardians of TREVER
 ALLEN BRUCE and KELTEN TANNER
 15 BRUCE; and JIM MAXWELL, as executor
 of the ESTATE OF KRISTIN MARIE
 16 MAXWELL-BRUCE,

17) CASE NO. **'07 CV 2385 JAH WMC**

18) COMPLAINT FOR:

- 19) (1) 14 U.S.C. § 1983 (right of association);
- 20) (2) 14 U.S.C. § 1983 (*Monell* liability)
- 21) (3) Wrongful death;
- 22) (4) Survival action;
- 23) (5) Gross negligence;
- 24) (6) 14 U.S.C. § 1983 (excessive force);
- 25) (7) Battery;
- 26) (8) Intentional Infliction of Emotional
- 27) Distress;
- 28) (9) Negligent Infliction of Emotional Distress

Plaintiff,

v.

COUNTY OF SAN DIEGO; ALPINE FIRE
 PROTECTION DISTRICT; VIEJAS FIRE
 DEPARTMENT; DEPUTY LOWELL
 BRYAN "SAM" BRUCE; DOES 1-50,

Defendants.

DEMAND FOR JURY TRIAL

1 JIM MAXWELL and KAY MAXWELL, individually and as guardians of TREVER
2 ALLEN BRUCE and KELTEN TANNER BRUCE; and JIM MAXWELL, as executor of the
3 ESTATE OF KRISTIN MARIE MAXWELL-BRUCE (collectively “Plaintiffs”), for the
4 Complaint against defendants County of San Diego (the “County”), Alpine Fire Department
5 (“Alpine Fire”), Viejas Fire Department (“Viejas Fire”), Deputy Lowell Bryan “Sam” Bruce,
6 DOES 1-15 San Diego County Employees, DOES 26-100 (all defendants collectively,
7 “Defendants”) allege as follows:

INTRODUCTION

9 1. As of December 14, 2006, Lowell Bryan "Sam" Bruce ("Bruce" or "Deputy
10 Bruce") was a San Diego County Deputy Sheriff assigned to the Las Colinas Detention
11 Facility ("Las Colinas") in San Diego. On the evening of December 14, 2006, Bruce left Las
12 Colinas and took his County-issued weapon home. Later that same evening, Bruce shot his
13 38-year old wife Kristin Marie Maxwell-Bruce ("Kristin") in the jaw. Bruce shot his wife
14 Kristin in front of their 4-year old son, Kelten, in the home owned by Kristin's parents, Jim
15 and Kay Maxwell ("Jim" and "Kay" or, collectively, the "Maxwells").

16 2. The County hired Bruce as a Deputy Sheriff after Bruce twice failed the
17 County's psychological evaluation in order to fill a vacancy at Las Colinas. Prior to hiring
18 Bruce, the County was experiencing difficulties in filling vacancies in the County's jail
19 facilities. The County clearly understood and appreciated that he was unfit for duty and prone
20 to violence, but hired him anyway. Not only did the County recklessly hire Bruce, but
21 thereafter provided him with a Glock handgun, and allowed him to take it home with him.
22 December 14 was one of the nights Bruce was permitted to take that weapon home, and, as a
23 result, at least six lives were forever altered.

24 3. After Bruce fired his shot, Kristin was seriously injured, but able to walk to the
25 telephone and call "911." The San Diego Sheriff's Department (the "Sheriff's Department")
26 responded, but the scene of the shooting quickly became a scene of chaos and disorder
27 under the direction and control of the Sheriff's Department after Sheriff's Deputies
28 learned one of their own was the shooter. Sheriff's Deputies locked down the scene and

1 refused to let Kristin be taken to the hospital. Meanwhile, emergency medical responders
2 from Alpine Fire and Viejas Fire – organizations under contract with the County to provide
3 emergency services – as well as from the Sheriff's Department allowed Kristin to suffocate
4 and drown in her own blood. Kristin died nearly an hour after dialing "911."

5 4. Defendants also prevented Kristin's parents – Jim and Kay Maxwell - from
6 seeing, speaking to, or comforting Kristin during the last hour of her life. Moreover, they
7 kept Jim and Kay Maxwell from each other in this critical time. In fact, after Jim Maxwell
8 learned that his daughter had died he attempted to walk to where his wife was being held by
9 Sheriff's Deputies. As Jim Maxwell attempted to walk down his driveway to see his wife,
10 one of the Sheriff's Deputies pepper-sprayed him in the face and then clubbed him in order to
11 keep him from his wife in this critical time. As a result, Kay Maxwell found out only after the
12 news media already knew that her daughter had died.

13 5. Plaintiffs assert numerous claims arising from these gruesome and unsettling
14 facts, based upon both tort and statutory law, and upon both federal and state law. Plaintiffs –
15 Kristin’s two sons, Kristin’s parents, and, upon a wrongful death claim, Kristin herself – pray
16 for damages against Defendants, and hope to obtain at least some relief from the catastrophe
17 Defendants caused.

THE PARTIES

19 6. Plaintiffs Jim and Kay Maxwell are residents of the County of San Diego,
20 within this judicial district. Jim Maxwell is the legal guardian of Trevor Allen Bruce and
21 Kelten Tanner Bruce, Kristin's children. The Maxwells are also Kristin's successors-in-
22 interest under Cal. Code Civ. Proc. § 377.11.

23 7. Plaintiffs are informed and believe and on that basis allege that the County of
24 San Diego is, and at all relevant times was, a political subdivision of the State of California,
25 and that the County is within this judicial district.

26 8. Plaintiffs are informed and believe and on that basis allege that Defendant
27 Alpine Fire Protection District ("Alpine Fire") is a fire department organized and existing

1 pursuant to California Health and Safety Code §§ 13800 *et seq.*, and that it is headquartered
2 within this judicial district.

3 9. Plaintiffs are informed and believe and on that basis allege that Defendant
4 Viejas Fire Department ("Viejas Fire") is a fire department wholly-owned and operated by the
5 Viejas Band of Kumeyaay Indians, a federally recognized Indian tribe, and that it operates
6 within this judicial district.

7 10. Plaintiffs are informed and believe and on that basis allege that, at all relevant
8 times, Defendant Lowell Bryan "Sam" Bruce ("Bruce" or "Deputy Bruce") was a Deputy
9 Sheriff employed by the County of San Diego Sheriff's Department and an agent and
10 employee of the County, and that he has resided, at all times relevant to this action, within this
11 judicial district.

12 11. Plaintiffs are ignorant of the true names and capacities of Defendants DOES 1-
13 25 San Diego County Employees and DOES 26-50, inclusive, and therefore sue these
14 defendants by such fictitious names. Plaintiffs will amend their complaint to allege the true
15 names and capacities of those defendants when the same has been ascertained.

16 12. Plaintiffs are informed and believe, and on that basis allege, that DOES 1-25
17 San Diego County Employees and DOES 26-50, and each of them, are responsible in some
18 manner for the occurrences alleged herein and proximately caused Plaintiffs' damages.
19 Plaintiffs are further informed and believe, and on that basis allege, that Defendants acted at
20 all times mentioned herein as the actual and/or ostensible agents, employees, servants or
21 representatives of each other and, in doing the activities alleged herein, acted within the scope
22 of their authority as agents and employees, and with the permission and consent of each other.

23 13. Plaintiffs are informed and believe, and on that basis allege, that at all times
24 mentioned herein all Defendants acted under color of law, statute, ordinance, regulations,
25 customs and usages of the State of California and County of San Diego.

26 ///

27 ///

28 ///

JURISDICTION AND VENUE

2 14. The Court has jurisdiction over Plaintiffs' federal law claims pursuant to 28
3 U.S.C. §§ 1331 and 1333, and supplemental jurisdiction over Plaintiffs' state law claims
4 pursuant to 28 U.S.C. § 1337(a).

5 15. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1331, as
6 Defendants reside within this judicial district and the acts that form the basis of Plaintiffs'
7 claims occurred in this judicial district.

8 16. Plaintiffs have timely complied with all government claim requirements, as set
9 forth in California Government Code §§ 900 *et seq.* Plaintiffs received written rejection of
10 their claims within six months of the filing of this complaint.

GENERAL ALLEGATIONS

12 17. Plaintiffs are informed and believe that in or about 1993, Bruce submitted an
13 application for employment with the County for the position of Corrections Deputy Sheriff.
14 As part of the application process, the County performed a background investigation and
15 psychological evaluation of Bruce.

16 18. Plaintiffs are informed and believe that as part of the application process,
17 Bruce underwent and failed the psychological evaluation, and, for that reason, the County
18 denied employment to Bruce. Plaintiffs are informed and believe that pursuant to civil service
19 rules established by the County, Bruce underwent a second psychological evaluation, which
20 he also failed.

19. Plaintiffs are informed and believe that the psychological evaluations
administered by the County revealed a history of physical violence on the part of Bruce and
test results that indicated to the County that Bruce would tend to resort to violence as a way of
resolving interpersonal differences with others.

25 20. Plaintiffs are informed and believe that after his failure of the psychological
26 evaluation administered by the County, Bruce applied for and was rejected for a position with
27 the San Diego Police Department.

1 21. Plaintiffs are informed and believe that after his failure of the psychological
2 evaluation administered by the County, Bruce applied for and was rejected for a position with
3 the San Diego Harbor Police.

4 22. Plaintiffs are informed and believe that after his failure of the psychological
5 evaluation administered by the County, Bruce applied for and was rejected for a position with
6 the California Highway Patrol.

7 23. Plaintiffs are informed and believe that after his failure of the psychological
8 evaluation administered by the County, Bruce applied for and was rejected for a position with
9 the San Diego Sheriff's Department a second time.

10 24. Plaintiffs are informed and believe that after his failure of the psychological
11 evaluation administered by the County, Bruce applied for and was rejected for a position with
12 the Los Angeles Police Department.

13 25. Plaintiffs are informed and believe that after his failure of the psychological
14 evaluation administered by the County, Bruce applied for and was rejected for a position with
15 the Chula Vista Police Department.

16 26. Plaintiffs are informed and believe that after his failure of the psychological
17 evaluation administered by the County, Bruce applied for and was rejected for a position with
18 the California Highway Patrol a second time.

19 27. Plaintiffs are informed and believe that after his failure of the psychological
20 evaluation administered by the County, Bruce applied for and was rejected for a position with
21 the Everett, Washington Police Department.

22 28. Plaintiffs are informed and believe that after his failure of the psychological
23 evaluation administered by the County, Bruce applied for and was rejected for a position with
24 the Kent, Washington Police Department.

25 29. Plaintiffs are informed and believe that after his failure of the psychological
26 evaluation administered by the County, Bruce applied for and was rejected for a position with
27 the Washington State Patrol.

28

1 30. Plaintiffs are informed and believe that despite its knowledge of Bruce's prior
2 failure of two psychological evaluations and his lack of psychological fitness, and despite its
3 knowledge that Bruce had applied to and been rejected for employment by at least eight other
4 law enforcement agencies, the County decided to hire Bruce as a San Diego County Sheriff's
5 Deputy and provide him with a deadly weapon which he ultimately used to shoot his wife.

THE NIGHT OF DECEMBER 14, 2006

7 31. On December 14, 2006, Bruce took his County-issued service weapon home
8 with him from Las Colinas and fired a shot at his wife Kristin. His County-issued bullet hit
9 Kristin in the jaw, severely injuring her. At the time, Kristin and Bruce were living at the
10 Maxwells' home in Alpine, California. At the time Bruce shot Kristin, Jim and Kay, as well
11 as Kristin and Bruce's two young sons, Trever Allen Bruce, and Kelten Tanner Bruce, ages
12 seven and four respectively, were home. In fact, Bruce shot Kristin directly in front of
13 Kelten, one of their two sons.

32. With her jaw bleeding, Kristin was able to walk to a telephone and dial "911."

15 33. Shortly after Bruce shot Kristin with his County-issued weapon, Jim Maxwell
16 – seeing his daughter bleeding – confronted Bruce about the seriousness of the injury to which
17 Bruce responded in substance that the injury was not a life-threatening injury.

18 34. Bruce – rather than calling “911” or requesting medical assistance for his
19 victim wife – instead called a supervisor at the Sheriff’s Department and confessed to his
20 employer that he had just shot his wife.

21 35. The Sheriff's Department and emergency medical responders from Alpine Fire
22 and Viejas Fire responded to the Maxwell home. At the time they responded, Kristin was still
23 alive.

24 36. Sheriff's Deputies locked down the scene of the shooting and refused to let
25 Kristin be taken to the hospital. As a result, Kristin died at the scene, nearly an hour after she
26 called for help.

27 37. During the last hour of Kristin's life, Defendants refused to let her parents see
28 her, refused to let them speak to her or comfort her, and refused to let Jim and Kay Maxwell

1 see, speak to or comfort each other. Sheriff's Deputies and/or other County employees and
2 agents, acting within the course and scope of their employment, assaulted, restrained, and
3 otherwise mistreated the Maxwells as they sought to find out the status of their daughter's
4 condition. Jim Maxwell was pepper-sprayed in the face and clubbed while he sought
5 information about his daughter. Defendants' incompetence or arrogance even caused the
6 news media to believe Jim was a "suspect," despite that Sheriff's Deputies clearly understood
7 that Bruce had been Kristin's shooter. Meanwhile, Kay Maxwell was kept without any
8 information and away from her daughter, learning that she died only after the news media
9 knew that her daughter was dead. The Maxwells were unlawfully detained and falsely
10 imprisoned, kept away from their daughter by Defendants acting in the course and scope of
11 their employment. Kristin's young boys were also mistreated by Defendants. These actions
12 caused emotional distress to these Plaintiffs.

13 38. Sheriff's Department employees, Alpine Fire and Viejas Fire employees,
14 and/or agents of these organizations – all acting within the course and scope of their
15 employment as emergency medical services providers – caused Kristin's death by performing
16 emergency medical services, including but not limited to first aid, medical treatment, rescue
17 procedures, transportation, and other necessary and related activities in a grossly negligent
18 manner.

19 39. Last but certainly not least, Bruce himself acted with a willful and conscious
20 disregard of the rights and safety of his wife Kristin, the Maxwells, and his sons Trever Allen
21 Bruce and Kelten Tanner Bruce. He subjected these members of his own family to cruel and
22 unjust hardship in conscious disregard of their rights.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

FIRST CAUSE OF ACTION

(Violation of 42 U.S.C. § 1983 (Right of Association) –

against Defendants County of San Diego, DOES 1-25

San Diego County Employees and DOES 26-100)

5 40. Plaintiffs reallege and incorporate by reference paragraphs 1 through 39 of this
6 Complaint, as if fully set forth at this point.

7 41. Plaintiffs are informed and believe, and on that basis allege, that Defendants,
8 acting under color of state law, deprived Plaintiffs of the right to familial relationships in
9 violation of the Fourth Amendment, and without due process in violation of the Fourteenth
10 Amendment, by use of unreasonable, unjustified force and violence, and by deliberate
11 indifference to medical needs, causing injuries and failing to treat injuries, which resulted in
12 the death of Kristin Maxwell-Bruce, in violation of the rights, privileges and immunities
13 secured by the Fourth and Fourteenth Amendments to the United States Constitution.

42. As a result of the wrongful acts of Defendants, and each of them, Plaintiffs
have suffered and continue to suffer general damages, including grief, emotional distress, loss
of the care, comfort, affection and society, and special damages, including loss of protection
and support, in an amount to be determined according to proof at trial.

18 43. In doing the foregoing wrongful acts, Defendants, and each of them, acted in
19 reckless and callous disregard for the constitutional rights of Kristin Maxwell-Bruce. The
20 wrongful acts were willful, oppressive, fraudulent, and malicious, thus warranting the award
21 of exemplary and punitive damages against each defendant, except for governmental entity
22 defendants, in an amount adequate to punish the wrongdoers and deter future misconduct.

SECOND CAUSE OF ACTION

(Violation of 42 U.S.C. § 1983)

(Monell Liability) -

against Defendant County of San Diego)

27 44. Plaintiffs reallege and incorporate by reference paragraphs 1 through 43 of this
28 Complaint, as if fully set forth at this point.

1 45. Plaintiffs are informed and believe, and on that basis allege, that Defendant
2 County, acting under color of state law, implicitly or explicitly adopted and implemented
3 careless and reckless hiring policies or practices, that enabled the hiring of an individual as a
4 Sheriff's Deputy, such as Defendant Bruce, who had previously failed two psychological
5 evaluations which revealed a history of physical violence and a tendency to resort to violence
6 as a way of resolving interpersonal differences with others.

7 46. Plaintiffs are informed and believe, and on that basis allege, that Defendant
8 County's hiring policies or practices permitted the hiring of an individual as a Sheriff's
9 Deputy, such as Defendant Bruce, that it knew had applied to and been rejected for
10 employment by at least eight other law enforcement agencies due to the individual's prior
11 failure of two psychological evaluations and demonstrated lack of psychological fitness.

12 47. Upon being hired as a Sheriff's Deputy under these careless and reckless
13 policies or practices, Defendant Bruce was furnished with a firearm by Defendant County.

14 48. Utilizing the firearm furnished by Defendant County, Defendant Bruce shot his
15 wife Kristin Maxwell-Bruce and proximately caused her death, thereby violating her rights
16 under the Fifth and Fourteenth Amendments to the United States Constitution.

17 49. In general, the failure of the San Diego Sheriff's Department to implement safe
18 and reasonable hiring policies and practices amounts to deliberate indifference of the rights of
19 the individuals its officers come into contact with.

20 50. In particular, the failure of the San Diego Sheriff's Department to implement
21 safe and reasonable hiring policies and practices amounted to deliberate indifference of the
22 rights of Kristin Maxwell-Bruce to be free from excessive force and deprivation of life
23 without due process of law under the Fifth and Fourteenth Amendments to the United States
24 Constitution.

25 51. As a result of the wrongful act of Defendant County, Plaintiffs have suffered
26 and continue to suffer general damages, including grief, emotional distress, loss of the care,
27 comfort, affection and society, and special damages, including loss of protection and support,
28 in an amount to be determined according to proof at trial.

THIRD CAUSE OF ACTION

(Wrongful death – By Jim Maxwell and Kay Maxwell, as guardians
of Trever Allen Bruce and Kelten Tanner Bruce – against all Defendants)

52. Plaintiffs reallege and incorporate by reference paragraphs 1 through 51 of this
Complaint, as if fully set forth at this point.

53. Plaintiffs are informed and believe, and on that basis allege, that as a proximate
result of the acts and omissions of Defendants, including gross negligence in the provision of
emergency services. Kristin Maxwell-Bruce suffered loss of life.

9 54. As a proximate result of the acts and omissions of Defendants, including gross
10 negligence in the provision of emergency services, and the death of Kristin Maxwell-Bruce,
11 Trevor Allen Bruce and Kelten Tanner Bruce have suffered and continue to suffer loss of the
12 care, comfort, affection, society, protection and support of their mother, Kristin Maxwell-
13 Bruce, in an amount to be determined according to proof at trial.

FOURTH CAUSE OF ACTION

(Survival action - By Jim Maxwell, as executor of the
Estate of Kristin Marie Maxwell-Bruce – against all Defendants)

17 55. Plaintiffs reallege and incorporate by reference paragraphs 1 through 54 of this
18 Complaint, as if fully set forth at this point.

19 56. Plaintiffs are informed and believe, and on that basis allege, that as a proximate
20 result of the acts and omissions of Defendants, including gross negligence in the provision of
21 emergency services, Kristin Maxwell-Bruce died of injuries she sustained on December 14,
22 2006.

23 57. As a proximate result of the acts and omissions of Defendants, including gross
24 negligence in the provision of emergency services, Kristin Maxwell-Bruce suffered
25 compensable damages prior to her death, in an amount to be determined at trial according to
26 proof.

27 | //

28 //

FIFTH CAUSE OF ACTION

(Gross Negligence – against Defendants

Alpine and Viejas and DOES 26-35)

58. Plaintiffs reallege and incorporate by reference paragraphs 1 through 57 of this Complaint, as if fully set forth at this point.

59. Plaintiffs are informed and believe and on that basis allege that, at all relevant times, Defendant Viejas was a party to a mutual aid agreement with Defendant Alpine pursuant to California Health and Safety Code § 13863, and was operating an ambulance service pursuant to the mutual aid agreement at the time of the incident, and outside of federally recognized tribal land.

11 60. California Health and Safety Code § 13863(a) provides: "A district may enter
12 into mutual aid agreements with any ... federally recognized Indian tribe." California Health
13 and Safety Code § 13863(b) provides: "The ... federally recognized Indian tribe ... shall have
14 the same immunity from liability for civil damages on account of personal injury to or death
15 of any person ... resulting from acts or omissions of its fire department personnel in the
16 performance of the provisions of the mutual aid agreement as is provided by law for the
17 district ..., except when the act or omission occurs on property under the control of the ...
18 federally recognized Indian tribe."

19 61. Plaintiffs are informed and believe, and on that basis allege, that Defendants
20 Alpine and Viejas, and each of them, had a duty to provide emergency medical services to
21 Kristin Maxwell-Bruce upon arriving at her home.

22 62. Plaintiffs are informed and believe, and on that basis allege, that Defendants
23 Alpine and Viejas, and each of them, were grossly negligent in their treatment of Kristin
24 Maxwell-Bruce.

25 63. As a proximate result of the acts and omissions of Defendants Alpine and
26 Viejas, and each of them, Kristin Maxwell-Bruce suffered loss of life.

27 64. As a further proximate result of the acts and omissions of Defendants Alpine
28 and Viejas, including the grossly negligent provision of emergency medical services, and the

1 death of Kristin Maxwell-Bruce, Jim Maxwell, Kay Maxwell, Trevor Allen Bruce and Kelten
2 Tanner Bruce have suffered and continue to suffer loss of the care, comfort, affection, society,
3 protection and support of their daughter and mother, Kristin Maxwell-Bruce, in an amount to
4 be determined according to proof at trial.

5 **SIXTH CAUSE OF ACTION**

6 (42 U.S.C. § 1983 (Excessive Force) – by
7 Jim Maxwell against Defendant County of San Diego and
8 DOES 1-25 San Diego County employees)

9 65. Plaintiffs reallege and incorporate by reference paragraphs 1 through 64 of this
10 Complaint, as if fully set forth at this point.

11 66. Plaintiffs are informed and believe, and on that basis allege, that Defendant
12 County has adopted policies, procedures, practices or customs within the San Diego County
13 Sheriff's Department that allow, among other things, the use of excessive force when other
14 more reasonable and less drastic methods are available.

15 67. On or about December 14, 2006, Defendant DOES 1-25 San Diego County
16 Employees, acting under color of state law, sprayed Jim Maxwell in the face with pepper
17 spray and clubbed him as he was walking down his driveway in order to prevent him from
18 seeing and comforting his wife.

19 68. The actions of Defendant County amounted to deliberate indifference to the
20 rights of Jim Maxwell to be free of excessive force and unreasonable seizure under the Fourth
21 and Fourteenth Amendments to the United States Constitution.

22 69. As a result of the deliberate indifference to Jim Maxwell's rights by Defendant
23 County and its agents, servants and employees, including, but not limited to Defendant DOES
24 1-25 San Diego County Employees, and each of them, Jim Maxwell suffered great mental and
25 physical pain and suffering, in an amount to be determined according to proof at trial.

26 ///
27 ///
28 ///

SEVENTH CAUSE OF ACTION

(Battery - by Jim Maxwell against Defendants

County of San Diego and DOES 1-25 San

Diego County Employees)

70. Plaintiffs reallege and incorporate by reference paragraphs 1 through 71 of this Complaint, as if fully set forth at this point.

71. Plaintiffs are informed and believe, and on that basis allege, that each of the Defendants sued herein as DOES 1-25 San Diego County Employees, inclusive, was the agent and employee of Defendant County and was at all times acting within the purpose and scope of such agency and employment on or about December 14, 2006 when they responded to a 911 call at Jim Maxwell's home in response to the claim that Defendant Bruce shot his wife Kristin Maxwell-Bruce.

72. Plaintiffs are informed and believe, and on that basis allege, that DOES 1-25 San Diego County Employees, in the course of responding to the 911 call, intentionally sprayed Jim Maxwell in the face with pepper spray and then clubbed him.

73. At no time did Jim Maxwell consent to any of the acts of DOES 1-25 San Diego County Employees alleged above.

74. As a proximate result of the acts of DOES 1-25 San Diego County Employees, Jim Maxwell has suffered physical injuries, pain and mental suffering.

75. The foregoing wrongful acts were willful, oppressive, fraudulent, and malicious, thus warranting the award of exemplary and punitive damages against each defendant, except for governmental entity defendants, in an amount adequate to punish the wrongdoers and deter future misconduct.

EIGHTH CAUSE OF ACTION

(Intentional Infliction of Emotional
Distress - against all Defendants)

76. Plaintiffs reallege and incorporate by reference paragraphs 1 through 75 of this Complaint, as if fully set forth at this point.

1 77. Plaintiffs are informed and believe, and on that basis allege, that Defendant
2 Bruce, by shooting his wife, Kristin Maxwell-Bruce, in their home, which resulted in her
3 eventual death, intended to cause, or recklessly disregarded the probability of causing, mental
4 anguish and emotional and physical distress to Kristin Maxwell-Bruce, Jim Maxwell, Kay
5 Maxwell, Trever Allen Bruce and Kelten Tanner Bruce, all of whom resided in the home
6 where Defendant's act occurred, and were present in the home at the time it occurred.

7 78. Plaintiffs are informed and believe, and on that basis further allege, that all
8 remaining Defendants, by their acts and omissions, including gross negligence in the
9 provision of emergency services to Kristin Maxwell-Bruce, unlawful detainment and false
10 imprisonment of Jim Maxwell and Kay Maxwell, and causing the media to believe that Jim
11 Maxwell was a suspect who had been arrested for the shooting of his daughter, engaged in
12 outrageous, non-privileged conduct with reckless disregard of the probability of causing
13 mental anguish, and emotional and physical distress to Kristin Maxwell-Bruce, Jim Maxwell,
14 Kay Maxwell, Trever Allen Bruce and Kelten Tanner Bruce, all of whom resided in the home
15 where Defendant's conduct occurred, and all of whom were present in the home at the time
16 and witnessed Defendants' conduct.

17 79. As a proximate result of Defendants' conduct, Kristin Maxwell-Bruce, Jim
18 Maxwell, Kay Maxwell, Trever Allen Bruce and Kelten Tanner Bruce suffered severe
19 physical and emotional distress and mental suffering; and Jim Maxwell, Kay Maxwell, Trever
20 Allen Bruce and Kelten Tanner Bruce continue to suffer severe physical and emotional
21 distress and mental suffering.

22 80. As a further direct and proximate result of Defendants' conduct, Plaintiffs
23 were, and will be, caused to retain the services of other medical professionals and to incur
24 reasonable expenses for the care and treatment of said injuries sustained, in an amount
25 presently unknown to Plaintiffs, but to be proven at trial.

26 81. The foregoing wrongful acts were willful, oppressive, fraudulent, and
27 malicious, thus warranting the award of exemplary and punitive damages against each
28

1 defendant, except for governmental entity defendants, in an amount adequate to punish the
2 wrongdoers and deter future misconduct.

NINTH CAUSE OF ACTION

(Negligent Infliction of Emotional Distress - against all Defendants)

6 82. Plaintiffs reallege and incorporate by reference paragraphs 1 through 81 of this
7 Complaint, as if fully set forth at this point.

8 83. Plaintiffs are informed and believe, and on that basis allege, that Defendant
9 Bruce knew or should have known that by shooting his wife, Kristin Maxwell-Bruce, in their
10 home, which resulted in her eventual death, would cause Kristin Maxwell-Bruce, Jim
11 Maxwell, Kay Maxwell, Trever Allen Bruce and Kelten Tanner Bruce, all of whom resided in
12 the home where Defendant's act occurred, and all of whom were present in the home at the
13 time and witnessed Defendants' conduct, to suffer mental anguish and emotional and physical
14 distress.

15 84. Plaintiffs are informed and believe, and on that basis further allege, that
16 remaining Defendants knew or should have known that their acts and omissions, including
17 gross negligence in the provision of emergency services to Kristin Maxwell-Bruce, unlawful
18 detainment and false imprisonment of Jim and Kay Maxwell, and causing the media to
19 believe that Jim Maxwell was a suspect who had been arrested for the shooting of his
20 daughter, would cause Kristin Maxwell-Bruce, Jim Maxwell, Kay Maxwell, Trever Allen
21 Bruce and Kelten Tanner Bruce, all of whom resided in the home where Defendant's ongoing
22 acts and omissions occurred, and all of whom were present in the home at the time and
23 witnessed Defendants' conduct, to suffer mental anguish and emotional and physical distress.

24 85. As a proximate result of the acts and omissions of Defendants, Kristin
25 Maxwell-Bruce, Jim Maxwell, Kay Maxwell, Trevor Allen Bruce and Kelten Tanner Bruce
26 suffered shock, fear and mental anguish; and Jim Maxwell, Kay Maxwell, Trevor Allen Bruce
27 and Kelten Tanner Bruce continue to suffer severe physical and emotional distress and mental
28 suffering.

1 WHEREFORE, Plaintiffs pray for judgment as follows:

2
3 FOR THE FIRST, SECOND AND SIXTH CAUSES OF ACTION:

- 4 1. For compensatory damages, according to proof at trial;
5 2. For exemplary and punitive damages;
6 3. For attorneys fees;
7 4. For costs of suit incurred herein; and
8 5. For such other and further relief as the Court may deem just and proper.

9
10 FOR THE THIRD CAUSE OF ACTION:

- 11 1. For damages for the loss of care, comfort, affection, society, protection and
12 support of Kristin Maxwell-Bruce;
13 2. For exemplary and punitive damages;
14 3. For costs of suit incurred herein; and
15 4. For such other and further relief as the Court may deem just and proper.

16
17 FOR THE FOURTH, SEVENTH AND EIGHTH CAUSES OF ACTION:

- 18 1. For general and special damages, according to proof at trial;
19 2. For exemplary and punitive damages;
20 3. For costs of suit incurred herein; and
21 4. For such other and further relief as the Court may deem just and proper.

22
23 FOR THE FIFTH AND NINTH CAUSES OF ACTION:

- 24 1. For compensatory damages, according to proof at trial;
25 2. For costs of suit incurred herein; and
26 3. For such other and further relief as the Court may deem just and proper.

27
28

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs hereby submit this demand that this action be tried in front of a jury, pursuant to
3 Federal Rule of Civil Procedure 38 and Civil L.R. 38.1.

4

5 Dated: December 19, 2007

CHARLES G. LA BELLA
STEVEN T. COOPERSMITH
LA BELLA & McNAMARA, LLP

TODD D. THIBODO
LAW OFFICES OF TODD D. THIBODO
A PROFESSIONAL CORPORATION

10 By: 

11 Steven T. Coopersmith
12 Charles G. La Bella
13 Attorney for PLAINTIFFS

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

JS 44

(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

CIVIL COVER SHEET**I. (a) PLAINTIFFS**

JIM MAXWELL and KAY MAXWELL, individually and as guardians of TREVOR ALLEN BRUCE and KELTON TANNER BRUCE; and JIM MAXWELL, as executor of the ESTATE OF KRISTIN MARIE MAXWELL-BRUCE

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF SAN DIEGO
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

COUNTY OF SAN DIEGO; ALPINE FIRE PROTECTION DISTRICT; VIEJAS FIRE DEPARTMENT; DEPUTY LOWELL BRYAN "SAM" BRUCE; DOES 1-50

*12/19/07 PM 3:47
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA*

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT SAN DIEGO

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Charles G. La Bella
Steven T. Coopersmith
La Bella & McNamara, LLP
401 West A Street, Suite 1150
San Diego, CA 92101, (619) 696-9200

ATTORNEYS (IF KNOWN)

07 CV 2385 JAH WMc

II. BASIS OF JURISDICTION (PLACE AN 'X' IN ONE BOX ONLY)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

| | PT | DEF | PT | DEF |
|---|----------------------------|----------------------------|---|---|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.) 42 U.S.C. § 1983 and other causes of action arising from the treatment and death of Kristin Maxwell-Bruce

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|---|--|---|--|---|
| <input type="checkbox"/> 110 Insurance | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability | PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 |
| <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 630 Liquor Laws | PROPERTY RIGHTS | <input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 330 Federal Employers' Liability | <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. | <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange, <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 |
| <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 340 Marine | <input type="checkbox"/> 660 Occupational Safety/Health | SOCIAL SECURITY | <input type="checkbox"/> 881 Agricultural Acts <input type="checkbox"/> 882 Black Lung (923) <input type="checkbox"/> 883 DIWC/DIWW (405(g)) |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 345 Marine Product Liability | <input type="checkbox"/> 690 Other | <input type="checkbox"/> 884 SSID Title XVI <input type="checkbox"/> 885 RSI (405(g)) | <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act |
| <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 350 Motor Vehicle | LABOR | FEDERAL TAX SUITS | <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 710 Fair Labor Standards Act | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 950 Constitutionality of State Statutes |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits | <input type="checkbox"/> 380 Other Personal Injury | <input type="checkbox"/> 720 Labor/Mgmt. Relations | <input type="checkbox"/> 871 IRS - Third Party 28 USC 7609 | <input type="checkbox"/> 890 Other Statutory Actions |
| <input type="checkbox"/> 160 Stockholders' Suits | | <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act | | |
| <input type="checkbox"/> 180 Other Contract | | <input type="checkbox"/> 740 Railway Labor Act | | |
| <input type="checkbox"/> 195 Contract Product Liability | | <input type="checkbox"/> 790 Other Labor Litigation | | |
| REAL PROPERTY | CIVIL RIGHTS | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | | |
| <input type="checkbox"/> 210 Land Condemnation | <input type="checkbox"/> 441 Voting | | | |
| <input type="checkbox"/> 220 Foreclosure | <input type="checkbox"/> 442 Employment | | | |
| <input type="checkbox"/> 230 Rent Lease & Ejectment | <input type="checkbox"/> 443 Housing/ Accommodations | | | |
| <input type="checkbox"/> 240 Torts to Land | <input type="checkbox"/> 444 Welfare | | | |
| <input type="checkbox"/> 245 Tort Product Liability | <input checked="" type="checkbox"/> 440 Other Civil Rights | | | |
| <input type="checkbox"/> 290 All Other Real Property | | | | |
| | | | | |

VI. ORIGIN

- 1 Original Proceeding 2 Removal from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ to be proven at trial CHECK YES only if demanded in complaint:
UNDER F.R.C.P. 23 JURY DEMAND: YES NO

VIII. RELATED CASE(S) (See instructions): JUDGE _____ Docket Number _____
IF ANY

DATE 12-19-2007 SIGNATURE OF ATTORNEY OF RECORD *Steven T. Coopersmith*

PAID \$350 12/19/07 BY 12 CDT 145732
:ODMA\PCDOCS\WORDPERFECT228161 January 24, 2000 (3:10pm)

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

145732 - BH

December 19, 2007
15:46:42

Civ Fil Non-Pris
USAO #: 07CV2385 CIVIL FILING
Judge.: JOHN A HOUSTON
Amount.:
Check#: BC# 8712 \$350.00 CK

Total-> \$350.00

FROM: CIVIL FILING
MAXWELL ET AL V. CITY OF SAN D
ET AL